Single Bench

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT ...PUR(CG)

WRIT PETITION NO. . .1.1 . . 2005

PETITIONER : SMT. BHANA BAI DESHMUKH aged 43 years
W/O Shri Motilal Deshmukh,
R/O Village - BORSI DURG.
Tah. & Distt. DURG (C.G.)

06/05

R.R. No.
Presented by Shri V.G. Tamaskar
dated 03-01-05

VERSUS.

RESPONDENTS : (1) State of Chhattisgarh,
Through Principal Secretary,
Mining Department, Govt.of Chhattisgarh
Secretariat, RAIPUR (C.G.).

(2) The Collector (Mining Branch)
Through Mining Officer,
Collectorate DURG (C.G.).

(3) State Bank of Indore, Durg-3-347
Through - Branch Manager,
State Bank of Indore, DURG (C.G.).

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

(48)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... W.P. 11/ ..... सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1-3-2005

On a mention being made, the matter is taken up for hearing.

Shri V.G. Tamaskar, counsel for the petitioner.

Shri Sanjay S. Agrawal, Government Advocate for the State/respondents No.1 and 2.

Heard both the counsel.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality and correctness of the order dated 27-12-2004 (Annexure P-7) passed by the Collector (Mining Branch), District: Durg, whereby the petitioner has been restrained from doing the work on land bearing Khasra Nos.450, 452, 464, 465, 466, 469 & 470 admeasuring 1.95 hectares for the purpose of manufacturing of bricks and for that purpose order Annexure P-1 was passed by the Collector, Durg, and the petitioner was allowed to manufacture bricks till 27.12.2008.

The case of the petitioner is that the petitioner was granted mining lease vide order Annexure P-1 for manufacturing of bricks in Khasra Nos. 450, 452, 464, 465, 466, 469 & 470 admeasuring 1.95 hectares of land. For manufacturing of bricks the petitioner took a loan of Rs.5 lakhs and a certificate was also issued by the Khadi Tatha Gramodyog Commission, Government of India. Further, the Collector, Durg, issued a show cause notice dated 1-10-2004 Annexure P-5 to the petitioner and the petitioner submitted a detailed reply of the show cause notice. Vide order Annexure P-7, the petitioner has been restrained from entering into her own land and the impugned order has been passed without jurisdiction.

Reply has been filed on behalf of the State/respondents No.1 & 2 in which it has been stated that the petitioner was found committing

(49)

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

irregularities, therefore, the show cause notice was issued and as an interim measure, the impugned order has been passed.

I have perused the record.

It is admitted position that the petitioner was granted mining lease for manufacturing the bricks on her own land bearing Khasra Nos. 450, 452, 464, 465, 466, 469 & 470 admeasuring 1.95 hectares, and that lease was granted till 27.12.2008. During this period, show cause notice Annexure P-5 was issued to the petitioner under the Chhattisgarh Mines and Minerals Rules, 1996, and according to the notice, four irregularities were alleged to have been committed by the petitioner. The petitioner has filed reply of the same denying the irregularities. However, the impugned order has been passed under Section 247 (5) of the Chhattisgarh Land Revenue Code, 1959, which reads as follows:-

> *"No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed."*

Learned Govt. Advocate is not able to point out how this order has been passed under sub-section (5) of Section 247 of the Code, 1959. Therefore, on this score only this order is liable to be quashed.

In the result, the writ petition is allowed and the order dated 27.12.2004 (Annexure P-7) is quashed. However, it is made clear that the Collector is not precluded from passing any order in accordance with the Chhattisgarh Mines and Minerals Rules, 1996.

In view of this order, M.(W.).P.No.15/2005 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma
9/3/05
23/3/05